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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,749	07/12/2001	Robert Noodeljk	CHRE:112	9603

7590 12/19/2005

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SUITE 210  
1421 PRINCE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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HWU, JUNE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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09/02/99

EXAMINER

Hwu

ART UNIT

PAPER

112805

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents****Rule 105 Requirement for Information**

The claimed chrysanthemum plant 'Sunny Elite Reagan' is described in the Netherlands Plant Breeder's Right (PBR) application number CHR3121 published June 16, 1999 and the Polish PBR application number OO00739 (CHO0115) published on March 31, 2000, more than one year prior to the filing date of the instant application. The Applicant has admitted that the instant plant was placed on public sale in the Netherlands on January 1999, more than one year prior to the filing in the United States. The UPOV-Rom publication is a form of public notice. Thus, information regarding the claimed variety, in the form of the publications noted above, was readily available to interested persons of ordinary skill in the art.

Given this information, the application is a printed publication under the guidelines set forth in *In re Wyer*. See *In re Wyer*, 655 F.2d 221, 226, 210 USPQ 790, 794 (CCPA 1981). See also MPEP § 2128. The Plant Breeder's Right application is enabled if the disclosed cultivar could have been propagated from publicly available materials. One skilled in the art would have the knowledge of how to do so, given the notoriety of various methods of asexual propagation.

A printed publication can serve as a statutory bar under 35 U.S.C. 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. In *re Le Grice*, 301 F.2d 929, 133 USPQ 365 (CCPA 1962). If one skilled in the art could obtain or reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure. See *Ex parte Thomson*, 24 USPQ2d 1618, 1620 (Bd. Pat. App. & Inter. 1992) ("The issue is not whether the [claimed] cultivar Siokra was on public use or sale in the United States but, rather, whether 'Siokra' seeds were available to a skilled artisan anywhere in the world such that he/she could attain them and make/reproduce the cultivar Siokra disclosed in the cited publications.").

The publication cited above discloses the claimed variety and Applicants admit that the instant cultivar was available to the public as early as January 1999 (IDS filed on December 13, 2002), more than one year prior to the effective filing date of this instant application. However, a question remains as to the accessibility of any foreign sales of the claimed plant, the reproducibility of the claimed plant and whether one of ordinary skill in the art would have known of any foreign sale. The foreign sale must not be an obscure, solitary occurrence that would go unnoticed by those skilled in the art. One of ordinary skill in the art would have known where to obtain the claimed plant. For example, by searching the Internet for the UPOV listed breeder "Chrysanthemum Breeding Association N.V." one could have easily obtained the contact information such as the address- CBA N. v., Rijshornstraat 205, Rijsenhout, P.O.Box 370, 1430 AJ Aalsmeer, The Netherlands, telephone number- +31 (0)297 34 78 70, fax number- +31(0)297 34 46 12 and e-mail address- info@cba-nv.com listed on the web site <<http://www.cba-nv.nl/index.cfm?act=Contact.formulier>>. With that contact information, one of ordinary skill in the art could check the availability of

the claimed plant and where to purchase that plant.

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to determine the accessibility of any foreign sales and the reproducibility of any plants that were sold to the public, more than one year prior to the effective filing date of this application.

In response to this requirement please provide:

- a) a copy of any publications or advertisements relating to sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world if the sale, offer for sale, or public distribution occurred more than one year prior to the filing date of this instant application;
- b) any public information available regarding sales, offers for sale, or public distributions of the claimed plant anywhere in the world that occurred more than one year prior to the filing date of this instant application, including date(s) and location(s) as well as information pertaining to whether this was an obscure, solitary occurrence that would go unnoticed by those skilled in the art, more than one year prior to the filing date of this instant application;
- c) any information relating to the accessibility or non-accessibility of the claimed plant variety that one of ordinary skill in the art could have derived from the printed plant breeder's right document;
- d) Applicant is also invited to submit any information that would indicate that one of ordinary skill in the art would not have known how to successfully reproduce the claimed plant variety.

It is reasonable to expect that Applicant or the Assignee can readily obtain the requested documents and information.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicants are reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicants, a statement that the item is unknown to applicants will be accepted as a complete response to the requirement for that item. Where the applicants do not have and cannot readily obtain an item of required information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action, which is 2 months. This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

#### Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached on (571) 272-0975. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JH

KENT BELL  
PRIMARY EXAMINER

*Kent L. Bell*